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STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

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In re Application of:
SURYA BHATTACHARYA ET AL.
Serial No.: 10/020,208
Filed: 18 December 2001
Docket Number: 1875.0330001

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition filed on June 17, 2004, to withdraw the holding of abandonment of the above-identified application under 37 C.F.R. § 1.181.

The petition to withdraw the holding of abandonment is GRANTED.

An Office action (a Notice of Allowance and Fee(s) Due) was mailed December 23, 2003, setting a three-month statutory period for reply. In the absence of receipt of a response, a Notice of Abandonment was mailed on May 14, 2004.

Petitioner asserts that applicant did not receive the Office Action. In support of the assertion, petitioner submitted as evidence of lack of receipt of the Office action: 1) a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the docketing records indicates that the Office communication was not received, 2) a copy of the file jacket, and 3) a copy of the docketing records over the entire period between the mailing date of the Notice of Allowability (December 23, 2003) through February 24, 2004, the date of expiration for the period for reply. The petition was timely filed in response to the Notice of Abandonment mailed May 14, 2004, which provided petitioner with notice that no response had been received.

A review of the file record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the practitioner did not receive the Office action and attesting to the fact that a search of the file jacket and docket records

indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

Petitioner's timely filed statement and evidentiary support meet the criteria set forth in M.P.E.P. § 711.03(c), and provide a showing that the Office action was not received.

For the above stated reasons, the petition is granted. The Notice of Abandonment is hereby vacated, and the holding of abandonment is therefore withdrawn. The application is restored to pending status. Inconvenience to applicant is regretted.

The Office action (Notice of Allowability) shall be remailed along with a Notice of Allowance and Fee(s) Due. The statutory period for paying the fees will be reset to run from the date these Notices are mailed. Extension of time is not available under 37 C.F.R. § 1.136.

Any inquiry regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (571) 272-1606.

Sharon A. Gibson, Director
Technology Center 2800 Semiconductors,
Electrical & Optical Systems & Components

Jane Dyer
for
Sharon Gibson